

REMARKS

I. Status of the Claims

At the time of the Action, Claims 1-38 were pending. All claims stand rejected under Section 103(a) as being unpatentable over "Time Machines by Nautilus" (Time Machines) in view of U.S. Patent No. 5,897,467 to Habing (Habing). This rejection is addressed below.

II. Claim Amendments

Applicants respectfully direct the Examiner's attention to Claims 1, 13, 24 and 38, each of which has been amended to recite, *inter alia*, that the axes of rotation of the movement arms remain stationary during the movement of the movement arms between the extended and curled positions, and that the axes of rotation extend through the seated user's elbows. These amendments are supported by the specification in, for example, **Figures 2 and 3**.

III. The Section 103(a) Rejection

As noted above, the Action states that the subject matter of independent Claims 1, 13, 24 and 33 are obvious over Time Machines in view of Habing. More particularly, the Action concedes that Time Machines fails to disclose "the specific angles at which the pivot axes meet" (Claims 1, 24 and 33) and "front and rear uprights rising from respective legs" (Claim 13)¹. Habing is characterized as disclosing "an analogous device including a pair of support pads mounted to a frame movement resistance arm units with the axes of rotation outwardly canted to an angle approximately within the claimed range of the applicant," the Action at pages 2-3 (discussing Claim 1), page 7 (discussing Claim 24), and page 10 (discussing Claim 33), and "an analogous device wherein the frame structure includes pairs of front and rear uprights, with each set of front and rear uprights defining a vertical plane, wherein the vertical planes form an angle with respect to one another approximately between 20 and 70 degrees." The Action at page 5 (discussing Claim 13). Based on

¹ Presumably this omission also includes the recitation of the angle between the uprights, as without uprights in Time Machine there can be no angle between such uprights.

these characterizations, the Action concludes that it would have been obvious to the ordinarily skilled artisan to combine the teachings of Time Machines with Habing to conceive the subject matter of Claims 1, 13, 24 and 33.

In response, Applicants respectfully direct the Examiner's attention to amended Claims 1, 13, 24 and 38, each of which recites, *inter alia*, that the axes of rotation of the movement arms remain stationary as the movement arms move between the extended and curled positions, and that the axes of rotation extend through the seated user's elbows. This is clearly not the case with the Habing apparatus. Instead, the Habing apparatus includes an arm member 38 that is pivotally attached at a pivot 44 to a frame upright member 42 at the approximate location of the user's shoulder, and an arm member 36 that is pivotally attached to the arm member 38 at a pivot 40 at the approximate location of the user's elbow. In use, the pivot 44 at the shoulder is stationary, but the pivot 40 that corresponds to the user's elbow joint moves considerably during the exercise stroke. Figures 3-6 of Habing show the pivot 40 moving from a location near the seated user's waist when the user's arms are extended to a position above the user's shoulder when the user's arms are bent.

Habing states that the motion described above is particularly desirable. More specifically, in describing exercise for the biceps and triceps, Habing states that:

Typical prior art exercises for these muscle groups restrict movement of the arm to the elbow joint only. While movement at the elbow joint causes the greatest contraction of these muscles, the biceps muscle can also be exercised by locking the elbow joint and lifting the arm against resistance by rotation solely at the shoulder joint. Likewise, the triceps muscle can be exercised by locking the elbow joint and pushing down against resistance with rotation solely at the shoulder joint. **However, the biceps and triceps muscles can be more completely and effectively exercised when both the elbow and shoulder joints are rotated with a large degree of rotation at the elbow joint and a proportionately smaller amount of rotation at the shoulder joint.**

Habing at column 1, lines 22-35. The rotation of the shoulder joint described in Habing indicates that the axes of rotation of the machine that align with the elbow

joints of the user move during the exercise stroke, and Habing clearly states that such movement is desirable. Thus, Habing clearly teaches away from a biceps exercise machine, such as that recited in independent Claims 1, 13, 24 and 38, in which the axes of rotation of the movement arms that are aligned with the elbows remain stationary. In turn, the quoted statements in Habing teach away from its combination with a Time Machines-style machine that has axes of rotation that remains stationary but, which, as the Action concedes, fails to disclose the angular relationships recited in the claims.²

Moreover, Applicants also note that there is nothing in Habing to indicate that the angles of the apparatus shown therein actually meet the recitations set forth in the pending claims. As such, Applicants believe that this element of the claims is also absent from the cited references.

In view of the foregoing, Applicants respectfully submit that the combination of the teachings of Time Machines with the teachings of Habing is improper given that Habing clearly teaches away from this combination. As such, any finding that Time Machines and Habing produce a *prima facie* showing of obviousness is improper. Also, Applicants believe that the angular relationships recited in the claims are not met by Habing. Accordingly, Applicants respectfully request that the rejection of Claims 1, 13, 24 and 33 and claims depending therefrom be withdrawn.³

² This position is augmented by statements in the Declaration of Gregory M. Webb, submitted with Applicants' prior paper dated 5 May 2003, which provides numerous reasons why the ordinarily skilled artisan would have been disinclined to use a Time Machine-style apparatus in the first place.

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IV. Conclusion

The concerns of the Examiner having been addressed in full, Applicants respectfully request withdrawal of all outstanding rejections and the issuance of a Notice of Allowance forthwith. The Examiner is encouraged to address any questions regarding the foregoing to the undersigned, who may be reached at (919) 854-1400.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Non Fee Amendment, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450, on October 14, 2003.


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